NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2177-12T4

DONALD SOLDINGER, STEVEN PISARKIEWICZ, JOSEPH ORLANDO, JOHN FONTES, LORENZO WHITE and LARRY M. BEIGHTOL,

Plaintiffs-Appellants,

v.

FOOTBALL UNIVERSITY, LLC,

Defendant-Respondent,

and

FOOTBALL TECH, LLC,

Defendant.

Submitted April 1, 2014 – Decided May 27, 2014

Before Judges Messano and Lisa.

On Appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2870-11.

Gary M. Price, attorney for appellants.

Ronald T. Nagle, attorney for respondent.

PER CURIAM

Plaintiffs appeal from the March 12, 2012 orders dismissing their complaints pursuant to Rule 4:6-2(e) for failure to state

a claim upon which relief can be granted. We agree with plaintiffs that based on the narrow standard required for a Rule 4:6-2(e) motion, as laid down by our Supreme Court in Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739 (1989), the complaints were sufficient to state a claim upon which relief could be granted. Accordingly, we reverse.

In their separate complaints, each plaintiff alleged similar facts. Plaintiffs are all former football players or coaches. Between 2008 and 2010, they conducted football camps for Football University, a national company specializing in training for elementary and high school football players. Plaintiffs allege that they signed no contract with Football University and operated as independent contractors paid on a per camp basis, typically at the rate of $1,000 to $2,000 per camp. When disputes arose regarding payment for camps already conducted and the prospects for working additional camps in 2011, plaintiffs learned that some of the principals of Football University had formed a new company, Football Tech, which would conduct a similar business beginning in 2011. Five of the six plaintiffs signed contracts with Football Tech to conduct camps over the next two years, and, in early 2011, they began to do so. Although the sixth plaintiff did not sign such a contact, he also began conducting camps for Football Tech.

The complaints further allege that on February 1, 2011, Football University sued Football Tech and sought to enjoin it from operating. In that litigation, Football University moved for a temporary restraining order prohibiting former Football University coaches from working at Football Tech's camps, which were about to commence. Plaintiffs alleged that Football University's complaint was based, at least in part, upon the material misrepresentation that plaintiffs were under contract with it, but that plaintiffs had never signed contracts with Football University and were not subject to any restrictive covenants.

The complaints further allege that the litigation was settled on March 31, 2011 by virtue of a consent order providing that Football Tech would release the coaches named in the suit, including plaintiffs. Plaintiffs were accordingly discharged on April 1, 2011 by Football Tech, with their contracts being unilaterally cancelled. Plaintiffs were told by the principals of Football Tech that, under the settlement, Football Tech would not be able to employ them for a period of one year from April 2011 to April 2012.

Plaintiffs contended that Football University's actions constituted intentional interference with their contractual relationship with Football Tech and intentional interference

with their economic advantage. Plaintiffs also included a count against Football Tech for breach of contract. However, Football Tech apparently went out of business and the complaints against it were administratively dismissed. Football Tech is not involved in this appeal.

Football University did not file an answer to the complaints. Instead, it moved for dismissal pursuant to Rule 4:6-2(e). The complaints were consolidated by Law Division order of February 24, 2012, and the matter came before the court for a hearing on March 12, 2012. In support of its motion, Football University furnished the court with a copy of its lengthy complaint against Football Tech in the earlier Chancery Division action. Plaintiffs furnished the court with certifications signed by each of them in the Chancery action which had been filed in opposition to Football University's request for injunctive relief.

The trial court did not reject these findings. Rather it considered them, and they were discussed at some length during the course of oral argument. Further, the attorneys made representations during that argument providing additional bits of information to the court. This procedure constituted a deviation from that which is required on a Rule 4:6-2(e) motion, in which only the allegations of the complaint should be

scrutinized. Indeed, when additional materials are submitted and not rejected by the court, the motion converts to a summary judgment motion, and all parties must be accorded a reasonable time to present all material pertinent to a summary judgment motion. R. 4:6-2(e). That was not done here. Indeed, both in the trial court and before us, plaintiffs have asked for time to conduct discovery in the hope that they can prove the allegations of their complaints.

In any event, considering all of the information presented, the trial court concluded that the reason plaintiffs lost money was because Football Tech went out of business and, even if their allegations about Football University misrepresenting that they were under contract could be proven, such misrepresentations were protected by the litigation privilege. Thus, the court concluded that the complaint failed to state a claim, and, to the extent it did, it was covered by the litigation privilege.

We conclude that the trial court's analysis and conclusion are not in accord with the well-settled standard of review of dismissal motions. In adjudicating a party's motion to dismiss for failure to state a claim, the trial court is required to "assum[e] that the allegations of the pleading are true and afford[] the pleader all reasonable factual inferences."

Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250-51 (App. Div. 2002) (citing Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956)). The court must search the pleading "in depth and with liberality to determine whether a cause of action can be gleaned even from an obscure statement." Id. at 251. (citing Printing Mart, supra, 116 N.J. at 746). Because Rule 4:6-2(e) "requires that the pleading be generously examined and . . . all matters outside the pleadings be excluded, the motion is granted only in rare instances." Ibid. (citing F.G. v. MacDonnell, 150 N.J. 550, 556 (1997)).

As a reviewing court, we undertake de novo review of a trial court's decision on a Rule 4:6-2(e) motion, applying "a standard no different than that applied by the trial courts." Ibid.; Sheidt v. DRS Techs., Inc. 424 N.J. Super. 188, 193 (App. Div. 2012). Therefore, we "review . . . the order in question in light of the facts pleaded by plaintiffs and the reasonable inferences that may be drawn therefrom." Seidenberg, supra, 348 N.J. Super. at 250.

Plaintiffs' essential allegation is that Football University constructed its claim against Football Tech, at least in substantial part, on the intentionally false representation that plaintiffs were under contract with it and could not be utilized by Football Tech as a result. Therefore, plaintiffs

argue that the trial court erred in concluding that plaintiffs were simply victims of happenstance because Football Tech went out of business. On the contrary, the allegations in plaintiffs' complaints assert a direct causal link between Football University's alleged material misrepresentations and Football Tech's demise.

In Printing Mart, the Court considered a claim for damages for intentional interference with prospective economic relations, noting that "'[i]ntentional interference with prospective economic relations' is used interchangeably . . . with such expressions as 'tortious interference with prospective economic advantage' or 'economic benefit,' 'intentional interference with a prospective contractual relationship,' and the like." Printing Mart, supra, 116 N.J. at 744. "An action for tortious interference with a prospective business relation protects the right 'to pursue one's business, calling or occupation free from undue influence or molestation . . . . What is actionable is '[t]he luring away, by devious, improper and unrighteous means, of the customer of another.'" Id. at 750 (alteration in original) (quoting Louis Kamm, Inc. v. Flink, 113 N.J.L. 582, 586 (E. & A. 1934)). A complaint of tortious interference must allege

> facts that show some protectable right -- a prospective economic or contractual

> relationship. Although the right need not equate with that found in an enforceable contract, there must be allegations of fact giving rise to some reasonable expectation of economic advantage. A complaint must demonstrate that a plaintiff was in "pursuit" of business. Second, the complaint must allege facts claiming that the interference was done intentionally and with malice. For purposes of this tort, "[t]he term malice is not used in the literal sense requiring ill will toward the plaintiff." Rather, malice is defined to mean that the harm was inflicted intentionally and without justification or excuse. Third, the complaint must allege facts leading to the conclusion that the interference caused the loss of the prospective gain. A plaintiff must show that if there had been no interference[,] there was a reasonable probability that the victim of the interference would have received the anticipated economic benefits. Fourth, the complaint must allege that the injury caused damage.
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> [Printing Mart, supra, 116 N.J. at 751-52 (alterations in original) (internal quotations and citations omitted).]

We are satisfied that plaintiffs' complaints establish the essential facts supporting their cause of action. They were clearly in pursuit of business with Football Tech. They alleged in their complaints that Football University made material misrepresentations, intentionally and with malice, i.e., without justification or excuse. The complaints also allege that but for the interference, a reasonable probability existed that they would have realized their anticipated earnings from Football

Tech. Finally, plaintiffs allege that Football University's conduct was the cause of their damage. Accordingly, the complaints alleged the "essential facts" necessary to support a cause of action for intentional interference with prospective economic advantage. The complaints should not have been dismissed for failure to state a claim.

We need not say much about the litigation privilege. The issue is entirely premature. At this stage of the proceedings, there is no clarity or specificity as to what statement or statements are claimed to fall within the privilege, when those statements were made, whether they constituted intentionally false and malicious misrepresentations, and the like.

The matter is reversed and remanded for further proceedings.